

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**LETTERS PATENT APPEAL No. 175 of 2007****In****MISC.CIVIL APPLICATION No. 2737 of 2006****In****SPECIAL CIVIL APPLICATION No. 14023 of 2004****With****CIVIL APPLICATION No. 2527 of 2007****In****LETTERS PATENT APPEAL No. 175 of 2007****For Approval and Signature:****HONOURABLE MR.JUSTICE A.M.KAPADIA****HONOURABLE MS.JUSTICE H.N.DEVANI**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?5 Whether it is to be circulated to the civil judge
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SUBHADRA VISHNUPRASAD NAIK - Appellant(s)**Versus****DIRECTOR OF MUNICIPALITIES & 3 - Respondent(s)**

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Appearance :MR RC JANI for Appellant(s) : 1,
MS ASMITA PATEL, AGP for Respondent(s) : 1, 3,
MR SANJAY M AMIN for Respondent(s) : 2,
NOTICE SERVED for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA**and****HONOURABLE MS.JUSTICE H.N.DEVANI**

Date : 26/06/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Admit.

2. Ms. Asmita Patel, learned AGP appears and waives service of notice of admission on behalf of respondents nos. 1 and 3, whereas Mr. Sanjay Amin, learned advocate appears and waives service of notice of admission on behalf of respondents no. 2.

3. Since the issue involved in this appeal runs in narrow compass with regard to restoration of Special Civil Application No.14023/2004 which has been dismissed for non prosecution as the learned advocate for the appellant remained absent, by consent of learned advocates appearing for the parties, the matter is taken up for final hearing today itself.

4. By this intra-Court appeal filed under clause 15 of the Letters Patent, the appellant original-petitioner has prayed to quash and set aside the order dated 1st December, 2006 rendered in Misc. Civil Application for review No.2737/2006 in Special Civil Application No.14023/2004 by learned Single Judge by which application seeking review of the order dismissing the

petition for default and further prayed to restore the main petition i.e. Special Civil Application No.14023/2004 to its original file, has been dismissed.

5. Heard Mr. R.C. Jani, learned advocate for the appellant, Ms. Asmita Patel, learned AGP for respondents nos. 1 and 3 and Mr. Sanjay Amin, learned advocate for respondent no.2.

6. Having perused the averments made in the appeal memo and the impugned order and also the averments made in the application for review, and without entering into the merits or demerits of the submissions advanced by the learned advocates appearing for the parties, according to us, no matter should be thrown overboard without hearing the litigants who approach the Court for redressal of their grievances to get justice. It is further seen that Special Civil Application NO. 14023/2004 was dismissed for default and, thereafter, the applicants had also filed review application to recall the order which also came to be dismissed. Therefore, according to us, in the larger interest of justice, if the order dated 1st December, 2006 as well as order dated 3rd February, 2006 are recalled and original Special Civil Application is restored to original file, same would meet the ends of justice.

7. In the above context, the appeal deserves to be allowed by recalling both the orders which are impugned in this appeal.
8. For the forgoing reasons, the appeal succeeds and accordingly it is allowed. Order dated 1st December, 2006 passed in Misc. Civil Application for review No.2737/2006 in Special Civil Application No.14023/2004 as well as order dated 3rd February, 2006 passed in Special Civil Application No. 14023/2004 dismissing the petition for default, are hereby quashed and set aside, the result of which is that Special Civil Application No. 14023/2004 is restored to its original file.
9. Registry is directed to place Special Civil Application No.14023/2004 for admission hearing before appropriate Court taking up service matters as per the present Roaster.
10. In view of the order passed in Letters Patent Appeal, no order is required to be passed in Civil Application. Hence, the same is accordingly disposed of.

(A.M.Kapadia,J.)

(H.N.Devani,J.)

(raghu)